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9

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) CR No. 04-704(B)
13)
Plaintiff,) PLEA AGREEMENT FOR DEFENDANT
14) PAUL GARRETT ASHLEY
v.)
15)
PAUL GARRETT ASHLEY,)
16)
Defendant.)
17)
18

19 1. This constitutes the plea agreement between PAUL GARRETT
20 ASHLEY ("defendant") and the United States Attorney's Office for
21 the Central District of California ("the USAO") in the above-
22 captioned case. This agreement is limited to the USAO and cannot
23 bind any other federal, state or local prosecuting,
24 administrative or regulatory authorities.

25 PLEA

26 2. Defendant gives up the right to indictment by a grand
27 jury and agrees to plead guilty to a four-count information in
28 the form attached to this agreement or a substantially similar

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1 form, charging defendant with conspiracy, in violation of 18
2 U.S.C. § 371, and aiding and abetting the transmission of a
3 program, code, information or command and intentionally causing
4 damage to a protected computer, in violation of 18 U.S.C.
5 §§ 1030(a)(5)(A)(i) and 2.

6 NATURE OF THE OFFENSE

7 3. In order for defendant to be guilty of conspiracy in
8 violation of 18 U.S.C. § 371, as charged in counts one and three
9 of the information, the following must be true:

10 a. Beginning on an unknown date, and ending in or
11 about February 2004, there was an agreement between two or more
12 persons to knowingly cause the transmission of a program,
13 information, code or command to a protected computer;

14 b. Defendant became a member of the conspiracy
15 knowing of at least one of its objects and intending to help
16 accomplish it; and

17 c. One of the members of the conspiracy performed at
18 least one overt act for the purpose of carrying out the
19 conspiracy.

20 4. In order for defendant to be guilty of aiding and
21 abetting the transmission of a program, code, information or
22 command and intentionally causing damage to a protected computer
23 in violation of 18 U.S.C. §§ 1030(a)(5)(A)(i) and 2, as charged
24 in counts two and four of the information, the following must be
25 true: (1) a co-defendant knowingly caused the transmission of a
26 program, information, code, or command to a computer; (2) as a
27 result of the transmission, the co-defendant intentionally
28 impaired the integrity or availability of data, a program, a

1 system or information without authorization; (3) the impairment
2 of the data, a program, a system or information resulted in
3 losses to one or more individuals totaling at least \$5,000 in
4 value at any time during a one-year period; (4) the impaired
5 computer was used in interstate or foreign commerce or
6 communication; (5) defendant knowingly and intentionally aided,
7 counseled, commanded, induced or procured the co-defendant
8 to commit the crime; and (6) defendant acted before the crime was
9 completed.

10 5. Defendant, as a member of the conspiracy charged in
11 counts one and three of the information, also may be guilty of
12 counts two and four if, by on or about February 2004, another
13 member of the conspiracy, during the course of and in furtherance
14 of the conspiracy, and as reasonably could have been foreseen to
15 defendant to be a necessary or natural consequence of the
16 conspiracy, knowingly caused the transmission of a program,
17 information, code, or command to a computer; (2) as a result of
18 the transmission, the co-defendant intentionally impaired the
19 integrity or availability of data, a program, a system or
20 information without authorization; (3) the impairment of the
21 data, a program, a system or information resulted in losses to
22 one or more individuals totaling at least \$5,000 in value at any
23 time during a one-year period; and (4) the impaired computer was
24 used in interstate or foreign commerce or communication.

25 6. Defendant expressly and unequivocally admits that he,
26 in fact, committed the crimes charged in counts one through four
27 of the information, and is, in fact, guilty of those offenses.

28 //

PENALTIES AND RESTITUTION

1
2 7. The statutory maximum sentence that the Court can
3 impose for a violation of Title 18, United States Code, Section
4 371, as charged in counts one and three of the information, is:
5 five years imprisonment; a three-year period of supervised
6 release; a fine of \$250,000 or twice the gross gain or gross loss
7 resulting from the offense, whichever is greatest; and a
8 mandatory special assessment of \$ 100.

9 8. The statutory maximum sentence that the Court can
10 impose for a violation of 18 U.S.C. § 1030(a)(5)(A)(i), as
11 charged in counts two and four, is: ten years imprisonment; a
12 three-year period of supervised release; a fine of \$250,000 or
13 twice the gross gain or gross loss resulting from the offense,
14 whichever is greatest; and a mandatory special assessment of
15 \$100.

16 9. Accordingly, the total statutory maximum sentence that
17 the Court can impose for the counts set forth in the information
18 is: thirty years imprisonment; a three-year period of supervised
19 release; a fine of \$1,000,000 or twice the gross gain or gross
20 loss resulting from the offense, whichever is greatest; and a
21 mandatory special assessment of \$400.

22 10. Supervised release is a period of time following
23 imprisonment during which defendant will be subject to various
24 restrictions and requirements. Defendant understands that if
25 defendant violates one or more of the conditions of any
26 supervised release imposed, defendant may be returned to prison
27 for all or part of the term of supervised release, which could
28 result in defendant serving a total term of imprisonment greater

1 than the statutory maximum stated above.

2 11. Defendant understands that defendant will be required
3 to pay full restitution to the victims of the offenses.

4 Defendant agrees that, in return for the USAO's compliance with
5 its obligations under this agreement, the amount of restitution
6 is not restricted to the amounts alleged in the counts to which
7 defendant is pleading guilty and may include losses arising from
8 charges not prosecuted pursuant to this agreement as well as all
9 relevant conduct in connection with those charges. The parties
10 currently believe that the applicable amount of restitution is at
11 least approximately \$300,000 excluding lost revenue to the victim
12 companies, but recognize and agree that this amount could change
13 based on facts that come to the attention of the parties prior to
14 sentencing. Defendant further agrees that defendant will not
15 seek the discharge of any restitution obligation, in whole or in
16 part, in any present or future bankruptcy proceeding.

17 12. Defendant also understands that, by pleading guilty,
18 defendant may be giving up valuable government benefits and
19 valuable civic rights, such as the right to vote, the right to
20 possess a firearm, the right to hold office, and the right to
21 serve on a jury.

22 13. Defendant further understands that the conviction in
23 this case may subject defendant to various collateral
24 consequences, including but not limited to, deportation,
25 revocation of probation, parole, or supervised release in another
26 case, and suspension or revocation of a professional license.
27 Defendant understands that unanticipated collateral consequences
28 will not serve as grounds to withdraw defendant's guilty plea.

FACTUAL BASIS

14. Defendant and the USAO agree and stipulate to the statement of facts provided below. This statement of facts includes facts sufficient to support pleas of guilty to the charges described in this agreement and to establish the sentencing guideline factors set forth in paragraph 17 below. It is not meant to be a complete recitation of all facts relevant to the underlying criminal conduct or all facts known to defendant that relate to that conduct.

Beginning in or about January 1997, defendant PAUL GARRETT ASHLEY was the founder, owner, and computer systems administrator of Creative Internet Techniques ("CIT"), an Internet Service Provider based in Powell, Ohio. CIT ran a network known as "Foonet," which provided for its customers computer servers and bandwidth for access to the Internet. Customers used Foonet's system to run a variety of computer services, including Internet Relay Chat ("IRC") and web servers. Foonet was particularly well-known in the Internet community for providing its customers with protection against Distributed Denial of Service Attacks ("DDCS" attacks). A DDOS is a type of malicious computer activity by which an attacker causes a network of computers to "flood" a victim computer with large amounts of data or specific computer commands. A IDOS attack typically renders the victim computer unable to handle legitimate network traffic and often the network will be unable to perform its intended function.

In December 2003, ASHLEY sold CIT to one of his CIT clients, Jay Echouafni, the owner and Chief Executive Officer of Orbit Communication Corporation ("Orbit"), a Massachusetts corporation based in Sudbury, Massachusetts. Orbit provided DirectTV home

1 satellite systems to customers through its website,
2 www.orbitsat.com, and its sales department. Echouafni
3 retained ASHLEY as the network administrator of CIT
4 after December 2003.

5 While operating Foonet, ASHLEY received a number
6 of complaints from other system administrators about
7 DDOS attacks and other malicious activity emanating
8 from computers within the Foonet network or perpetrated
9 by individuals using Foonet services in some respect.
10 Indeed, ASHLEY knowingly had allowed certain clients or
11 employees, including Jonathan Hall in Louisiana, Joshua
12 Schichtel in Arizona, and Lee Walker in the United
13 Kingdom, to use the Foonet server to create "botnets,"
14 or networks of compromised or infected computers used
15 to control or attack other computer systems. ASHLEY
16 knew that an Internet worm called an "Agobot" had been
17 used to infect the computers comprising the botnets
18 controlled by some of his clients through IRC control
19 channels located on Foonet.

20 From October 2003 through February 2004, ASHLEY
21 aided and abetted the launching of distributed denial
22 of service ("DDOS") attacks against the computers and
23 web sites of Weaknees.com, ("Weaknees"), an online
24 business based in Los Angeles, California;
25 RapidSatellite.Com ("Rapid"), an online business based
26 in Miami, Florida; and ExpertSatellite.com, ("Expert"),
27 a satellite system competitor located in Worcester,
28 Massachusetts. All three of these businesses were
competitors of Orbit, the corporation owned by ASHLEY's
CIT client, Echouafni. Echouafni asked ASHLEY to
coordinate and execute the DDOS attacks. Ashley then
directed CIT clients or employees to launch the attacks
as requested. ASHLEY received compensation for his
role, some of which he passed on to others involved in
the attacks.

1 Specifically, from on or about October 6, 2003
2 through on or about November 14, 2003, Echouafni
3 instructed ASHLEY to launch DDOS attacks against
4 Weaknees and Rapid, so that their web sites would be
5 unavailable to legitimate customers on the Internet.
6 ASHLEY then contacted Hall, Schichtel, Walker and
7 others to use their botnets controlled through IRC
8 channels on Foonet servers to flood on several
9 occasions the web servers used by Weaknees and Rapid,
10 as well as the domain name servers used by the
11 companies that hosted their web sites. ASHLEY
12 coordinated the attacks. On October 6, 2003, and again
13 on October 10, 2003, ASHLEY received compensation from
14 Echouafni.

15 As a result of the unlawful attacks, Weaknees and
16 its web host incurred an aggregate of at least \$105,000
17 in costs necessary to respond to the attacks, conduct
18 damage assessments and restore the system. Rapid and
19 its web host suffered an aggregate of at least \$97,000
20 in costs necessary to respond to the attacks, conduct
21 damage assessments and restore the system.

22 On or about February 5, 2004, ASHLEY was
23 instructed by Echouafni to attack the website of
24 Expert, another competitor of Orbit. ASHLEY then
25 contacted others to use their botnets to flood the
26 computers and website of Expert so that legitimate
27 customers would be unable to access Expert's website on
28 the Internet. The attacks continued repeatedly until
February 12, 2004.

As a result of the unlawful attacks, Expert and
its web host incurred an aggregate of at least \$42,000
in costs necessary to respond to the attacks, conduct
damage assessments and restore the system.

1 At all relevant times, the computers of Weaknees,
2 Rapid, and Expert were used in interstate and foreign
3 commerce and communication. In addition, defendant
4 ASHLEY was aware that many of the DDOS attacks on
5 Weaknees and Rapid Satellite were launched by Lee
6 Walker from the United Kingdom. Finally, defendant
7 ASHLEY knew that launching the DDOS attacks against
8 Weaknees, Rapid Satellite, and Expert was illegal and
9 would impair the integrity and availability of the
10 computer systems.

11 WAIVER OF CONSTITUTIONAL RIGHTS

12 15. By pleading guilty, defendant gives up the following
13 rights:

14 a) The right to persist in a plea of not guilty.
15 b) The right to a speedy and public trial by jury.
16 c) The right to the assistance of legal counsel at
17 trial, including the right to have the Court appoint counsel for
18 defendant for the purpose of representation at trial. (In this
19 regard, defendant understands that, despite his plea of guilty,
20 he retains the right to be represented by counsel - and, if
21 necessary, to have the court appoint counsel if defendant cannot
22 afford counsel - at every other stage of the proceedings.)

23 d) The right to be presumed innocent and to have the
24 burden of proof placed on the government to prove defendant
25 guilty beyond a reasonable doubt

26 e) The right to confront and cross-examine witnesses
27 against defendant.

28 f) The right, if defendant wished, to testify on
defendant's own behalf and present evidence in opposition to the

1 charges, including the right to call witnesses and to subpoena
2 those witnesses to testify.

3 g) The right not to be compelled to testify, and, if
4 defendant chose not to testify or present evidence, to have that
5 choice not be used against defendant.

6 By pleading guilty, defendant also gives up any and all
7 rights to pursue any affirmative defenses, Fourth Amendment or
8 Fifth Amendment claims, and other pretrial motions that have been
9 filed or could be filed.

10 SENTENCING FACTORS

11 16. Defendant understands that the Court is required to
12 consider the United States Sentencing Guidelines ("U.S.S.G." or
13 "Sentencing Guidelines") among other factors in determining
14 defendant's sentence. Defendant understands, however, that the
15 Sentencing Guidelines are only advisory, and that after
16 considering the Guidelines, the Court may be free to exercise its
17 discretion to impose any reasonable sentence up to the maximum
18 set by statute for the crimes of conviction.

19 17. Defendant and the USAO agree and stipulate to the
20 following applicable sentencing guideline factors based upon the
21 November 5, 2003 Guidelines:

22	Base Offense			
23	Level	:	6	[U.S.S.G. § 2B1.1(a)(2)]
24	Loss greater			
25	than \$200,000	:	12	[U.S.S.G. § 2B1.1(b)(1)(G)]
	(excluding			
	lost revenue)			
26	Sophisticated			
27	Means	:	2	[U.S.S.G. § 2B1.1(b)(8)(C)]
28	Computer			
	Intrusion	:	4	[U.S.S.G. § 2B1.1(b)(13)(A)(ii)]

1 Manager/
 2 Supervisor Role: 2 [U.S.S.G. § 3B1.1(b)]
 3 Multiple Counts: 1 [U.S.S.G. §§ 3D1.2, 3D1.4]

4 Total Offense
 5 Level: 27

6 The USAO will agree to a downward adjustment for acceptance of
 7 responsibility (and, if applicable, move for an additional level
 8 under § 3E1.1(b)) only if the conditions set forth in paragraphs
 9 20 and 21) are met. Subject to paragraph 24, defendant and the
 10 USAO agree not to seek, argue, or suggest in any way, either
 11 orally or in writing, that any other specific offense
 12 characteristics, adjustments or departures from the applicable
 13 Offense Level be imposed. If, however, after signing this
 14 agreement but prior to sentencing, defendant were to commit an
 15 act, or the USAO were to discover a previously undiscovered act
 16 committed by defendant prior to signing this agreement, which
 17 act, in the judgment of the USAO, constituted obstruction of
 18 justice within the meaning of U.S.S.G. § 3C1.1, the USAO would be
 19 free to seek the enhancement set forth in that section.

20 18. There is no agreement as to defendant's criminal
 21 history or criminal history category.

22 AGREEMENT NOT BINDING ON COURT

23 19. The stipulations in this agreement do not bind either
 24 the United States Probation Office or the Court. Both defendant
 25 and the USAO are free to: (a) supplement the facts by supplying
 26 relevant information to the United States Probation Office and
 27 the Court, (b) correct any and all factual misstatements relating
 28 to the calculation of the sentence, and (c) argue on appeal and

1 collateral review that the Court's sentencing guidelines
2 calculations are not error, although each party agrees to
3 maintain its view that the calculations in paragraph 17 are
4 consistent with the facts of this case.

5 DEFENDANT'S OBLIGATIONS

6 20. Defendant agrees that he or she will:

7 a) Plead guilty as set forth in this agreement

8 b) Not knowingly and willfully fail to abide by all
9 sentencing stipulations contained in this agreement.

10 c) Not knowingly and willfully fail to: (i) appear as
11 ordered for all court appearances, (ii) surrender as ordered for
12 service of sentence, (iii) obey all conditions of any bond, and
13 (iv) obey any other ongoing court order in this matter.

14 d) Not commit any crime; however, offenses which would
15 be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are
16 not within the scope of this agreement.

17 e) Not knowingly and willfully fail to be truthful at
18 all times with Pretrial Services, the U.S. Probation Office, and
19 the Court.

20 f) Pay the applicable special assessments at or before
21 the time of sentencing unless defendant lacks the ability to pay.

22 21. Defendant further agrees to cooperate fully with the
23 USAO, the Federal Bureau of Investigation, and, as directed by
24 the USAO, any other federal, state, local, or foreign law
25 enforcement agency. This cooperation requires defendant to:

26 a) Respond truthfully and completely to all questions
27 that may be put to defendant, whether in interviews, before a
28 grand jury, or at any trial or other court proceeding.

1 b) Attend all meetings, grand jury sessions, trials
2 or other proceedings at which defendant's presence is requested
3 by the USAO or compelled by subpoena or court order.

4 c) Produce voluntarily all documents, records, or
5 other tangible evidence relating to matters about which the USAO,
6 or its designee, inquires.

7 d) Act, if requested by the USAO to do so by the
8 USAO, in an undercover capacity to the best of defendant's
9 ability in connection with criminal investigations by federal,
10 state, or local law enforcement authorities, in accordance with
11 the instructions of those law enforcement authorities. Defendant
12 agrees not to act undercover, tape record any conversations, or
13 gather any evidence unless expressly instructed or authorized to
14 do so by federal, state, or local law enforcement authorities.

15 THE USAO'S OBLIGATIONS

16 22. If defendant complies fully with all defendant's
17 obligations under this agreement, the USAO agrees:

18 a) To abide by all sentencing stipulations contained in
19 this agreement.

20 b) To consent to the transfer of the case to the
21 Southern District of Ohio pursuant to Federal Rule of Criminal
22 Procedure 20.

23 c) At the time of sentencing, provided that defendant
24 demonstrates an acceptance of responsibility for the offenses up
25 to and including the time of sentencing, to recommend a two-level
26 reduction in the applicable sentencing guideline offense level,
27 pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary,
28 move for an additional one-level reduction if available under

1 that section. The USAO specifically reserves the right not to
2 recommend a reduction under U.S.S.G. § 3E1.1 if, at any time
3 between his execution of this Agreement and sentencing defendant:

4 (i) Fails to admit a complete factual basis for
5 the plea;

6 (ii) Fails to truthfully admit his conduct in the
7 offenses of conviction;

8 (iii) Falsely denies, or frivolously contests,
9 relevant conduct for which defendant is accountable under
10 U.S.S.G. § 1B1.3;

11 (iv) Fails to provide truthful information about
12 his financial status;

13 (v) Gives false or misleading testimony in any
14 proceeding relating to the criminal conduct charged in this case
15 and any relevant conduct for which defendant is accountable under
16 U.S.S.G. § 1B1.3;

17 (vi) Engages in acts which form a basis for
18 finding that defendant has obstructed or impeded the
19 administration of justice under U.S.S.G. § 3C1.1;

20 (vii) Intentionally fails to appear in Court or
21 violates any condition of release;

22 (viii) commits a crime;

23 (ix) Transfers any asset protected under any
24 provision of this Agreement; or

25 (x) Attempts to withdraw his guilty plea.

26 Defendant expressly understands that, in addition to declining to
27 recommend an acceptance-of-responsibility adjustment, the USAO
28 may seek an upward adjustment pursuant to U.S.S.G. § 3C1.1 if

1 defendant obstructs justice after the date of this Agreement.

2 d) To recommend that defendant be sentenced at the low
3 end of the applicable Sentencing Guidelines range provided that
4 the total offense level as calculated by the Court is 24 or
5 higher and provided that the Court does not depart downward in
6 offense level or criminal history category (except pursuant to,
7 and to the extent requested in, a motion by the USAO for a
8 downward departure under U.S.S.G. § 5K1.1). Notwithstanding its
9 agreement to recommend the low end of the Sentencing Guidelines
10 range, the USAO is free to recommend any conditions of
11 confinement, including imprisonment, if the total offense level
12 falls within Zone B or C of the sentencing table.

13 e) Not to offer as evidence in its case-in-chief in
14 the above-captioned case or any other prosecution that may be
15 brought against defendant by the USAO, or in connection with any
16 sentencing proceeding in any case that may be brought against
17 defendant by the USAO, any statements made by defendant or
18 documents, records, or tangible evidence provided by defendant
19 pursuant to this agreement or the letter agreements previously
20 entered into by the parties dated March 16, 2004 and June 15,
21 2004 ("the Letter Agreements"). Defendant agrees, however, that
22 the USAO may use such statements, documents, records, and
23 tangible evidence: (1) to obtain and pursue leads to other
24 evidence, which evidence may be used for any purpose, including
25 any prosecution of defendant, (2) to cross-examine defendant
26 should defendant testify, or to rebut any evidence, argument or
27 representations made by defendant or a witness called by
28 defendant in any trial, sentencing hearing, or other court

1 proceeding, and (3) in any prosecution of defendant for false
2 statement, obstruction of justice, or perjury.

3 f) Not to use any information provided by defendant
4 pursuant to this agreement or the Letter Agreements against
5 defendant at sentencing for the purpose of determining the
6 applicable guideline range, including the appropriateness of an
7 upward departure, and to recommend to the Court that such
8 information not be used in determining the point in the
9 Sentencing Guidelines range at which defendant should be
10 sentenced. Defendant understands, however, that information
11 provided by defendant pursuant to this agreement or the Letter
12 Agreements will be disclosed to the probation office and the
13 Court, and that the Court may use this information for the
14 purposes set forth in U.S.S.G § 1B1.8(b).

15 g) In connection with defendant's sentencing, to
16 bring to the Court's attention the nature and extent of
17 defendant's cooperation.

18 h) If the USAO determines, in its exclusive judgment,
19 that defendant has both complied with his obligations under
20 paragraphs 20 and 21 above and provided substantial assistance to
21 law enforcement in the prosecution or investigation of another
22 ("substantial assistance"), to move the Court pursuant to
23 U.S.S.G. § 5K1.1 to impose a sentence below the sentencing range
24 otherwise dictated by the sentencing guidelines.

25 DEFENDANT'S UNDERSTANDINGS REGARDING SUBSTANTIAL ASSISTANCE

26 23. Defendant understands the following:

27 a) Any knowingly false or misleading statement by
28 defendant will subject defendant to prosecution for false

1 statement, obstruction of justice, and perjury and will
2 constitute a breach by defendant of this agreement.

3 b) Nothing in this agreement requires the USAO or any
4 other prosecuting or law enforcement agency to accept any
5 cooperation or assistance that defendant may offer, or to use it
6 in any particular way.

7 c) Defendant cannot withdraw defendant's guilty pleas
8 if the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1
9 for a reduced sentence or if the USAO makes such a motion and the
10 Court does not grant it.

11 d) At this time the USAO makes no agreement or
12 representation as to whether any cooperation that defendant has
13 provided or intends to provide constitutes substantial
14 assistance. The decision whether defendant has provided
15 substantial assistance rests solely within the discretion of the
16 USAO.

17 e) The USAO's determination of whether defendant has
18 provided substantial assistance will not depend in any way on
19 whether the government prevails at any trial or court hearing in
20 which defendant testifies.

21 BREACH OF AGREEMENT

22 24. If defendant, at any time between the execution of this
23 agreement and the completion of defendant's cooperation pursuant
24 to the agreement or defendant's sentencing on a non-custodial
25 sentence or surrender for service on a custodial sentence,
26 whichever is later, knowingly violates or fails to perform any of
27 defendant's obligations under this agreement ("a breach"), the
28 USAO may declare this agreement breached. For example, if the

1 defendant knowingly in an interview, before a grand jury, or at
2 trial, falsely accuses another person of criminal conduct or
3 falsely minimizes his own role, or the role of another, in
4 criminal conduct, he will have breached this agreement. If the
5 USAO declares this agreement breached, and the Court finds such a
6 breach to have occurred, defendant will not be able to withdraw
7 defendant's guilty pleas, and the USAO will be relieved of all of
8 its obligations under this agreement. In particular:

9 a) The USAO will no longer be bound by any agreements
10 concerning sentencing and will be free to seek any sentence up to
11 the statutory maximum for the crimes to which defendant has
12 pleaded guilty.

13 b) The USAO will no longer be bound by any agreements
14 regarding criminal prosecution, and will be free to prosecute
15 defendant for any crime.

16 c) The USAO will be free to prosecute defendant for
17 false statement, obstruction of justice, and perjury based on any
18 knowingly false or misleading statement by defendant.

19 d) The USAO will no longer be bound by any agreement
20 regarding the use of statements, documents, records, tangible
21 evidence, or information provided by defendant, and will be free
22 to use any of those in any way in any investigation, prosecution,
23 or civil or administrative action. Defendant will not be able to
24 assert either (1) that those statements, documents, records,
25 tangible evidence, or information were obtained in violation of
26 the Fifth Amendment privilege against compelled self-
27 incrimination, or (2) any claim under the United States
28 Constitution, any statute, Rule 11(f) of the Federal Rules of

1 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or
2 any other federal rule, that statements, documents, records,
3 tangible evidence, or information provided by defendant before or
4 after the signing of this agreement, or any leads derived
5 therefrom, should be inadmissible.

6 25. Following a knowing and willful breach of this
7 agreement by defendant, should the USAO elect to pursue any
8 charge that was dismissed or not filed as a result of this
9 agreement, then:

10 a) Defendant agrees that any applicable statute of
11 limitations is tolled between the date of defendant's signing of
12 this agreement and the commencement of any such prosecution or
13 action.

14 b) Defendant gives up all defenses based on the statute
15 of limitations, any claim of preindictment delay, or any speedy
16 trial claim with respect to any such prosecution, except to the
17 extent that such defenses existed as of the date of defendant's
18 signing of this agreement.

19 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK
20 DEFENDANT'S WAIVER

21 26. Defendant gives up the right to appeal any sentence
22 imposed by the Court, including any order of restitution, and the
23 manner in which the sentence is determined, provided that (a) the
24 sentence is within the statutory maximum specified above and is
25 constitutional, (b) the Court in determining the applicable
26 guideline range does not depart upward in offense level or
27 criminal history category, and determines that the total offense
28 level is 27 or below, and (c) the Court imposes a sentence within

1 or below the range corresponding to the determined total offense
2 level and criminal history category. Defendant also gives up any
3 right to bring a post-conviction collateral attack on the
4 convictions or sentence, including any order of restitution,
5 except a post-conviction collateral attack based on a claim of
6 ineffective assistance of counsel, a claim of newly discovered
7 evidence, or a explicitly retroactive change in the applicable
8 Sentencing Guidelines, sentencing statutes, or statutes of
9 conviction. Notwithstanding the foregoing, defendant retains the
10 ability to appeal the court's determination of defendant's
11 criminal history category and the conditions of supervised
12 release imposed by the court, with the exception of the
13 following: standard conditions set forth in district court
14 General Orders 318 and 01-05; the drug testing conditions;
15 mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); the alcohol and
16 drug use conditions authorized by 18 U.S.C. § 3563(b)(7); and the
17 computer crimes conditions discussed in paragraphs 27 through 29.

18 COMPUTER CRIMES CONDITIONS

19 27. Defendant shall not possess or use a device with access
20 to any online service at any location without the prior approval
21 of the Probation Officer. This includes access through any
22 Internet service provider, bulletin board system, or any public
23 or private computer network system. Further, defendant shall not
24 have another individual access the Internet on his behalf to
25 obtain files or information that he is restricted from accessing
26 himself, or accept restricted files or information from another
27 person;

28 28. Defendant shall use only those computers, computer-

1 related devices, screen/user names, passwords, e-mail accounts,
2 and Internet Service Providers (ISPs) as approved by the
3 Probation Officer. Computer and computer-related devices
4 include, but are not limited to, personal computers, personal
5 data assistants (PDAs), Internet appliances, electronic games,
6 and cellular telephones, as well as peripheral equipment, that
7 can access, or can be modified to access, the Internet,
8 electronic bulletin boards, other computers, or similar media.
9 Defendant shall use any approved computers only within the scope
10 of his employment. Defendant shall not access a computer for any
11 other purposes. Defendant shall immediately report any changes
12 in defendant's employment affecting defendant's access and/or use
13 of computers or the Internet, including e-mail;

14 29. All computers, computer-related devices, computer
15 storage media, and peripheral equipment used by defendant shall
16 be subject to search and seizure, and subject to the installation
17 of search and/or monitoring software and/or hardware, including
18 unannounced seizure for the purpose of search. Defendant shall
19 not add, remove, upgrade, update, reinstall, repair, or otherwise
20 modify the hardware or software on any computers, computer-
21 related devices, or their peripheral equipment without the prior
22 approval of the Probation Officer, nor shall defendant hide or
23 encrypt files or data. Further, defendant shall, as requested by
24 the Probation Officer, provide all billing records, including
25 telephone, cable, Internet, satellite, and similar records.

26 GOVERNMENT'S WAIVER

27 30. The USAO gives up its right to appeal the sentence,
28 provided that (a) the Court in determining the applicable

1 guideline range does not depart downward in offense level or
2 criminal history category (except by a downward departure in
3 offense level pursuant to, and to the extent requested by, the
4 USAO in a motion under U.S.S.G. § 5K1.1), (b) the Court
5 determines that the total offense level is 27 or above prior to
6 any departure under U.S.S.G. § 5K1.1, and (c) the Court imposes a
7 sentence within or above the range corresponding to the
8 determined total offense level (after any downward departure
9 under U.S.S.G. § 5K1.1) and criminal history category.

10 COURT NOT A PARTY

11 31. The Court is not a party to this agreement and need not
12 accept any of the USAO's sentencing recommendations or the
13 parties' stipulations. Even if the Court ignores any sentencing
14 recommendation, finds facts or reaches conclusions different from
15 any stipulation, and/or imposes any sentence up to the maximum
16 established by statute, defendant cannot, for that reason,
17 withdraw defendant's guilty pleas, and defendant will remain
18 bound to fulfill all defendant's obligations under this
19 agreement. No one - not the prosecutor, defendant's attorney, or
20 the Court - can make a binding prediction or promise regarding
21 the sentence defendant will receive, except that it will be
22 within the statutory maximum.

23 NO ADDITIONAL AGREEMENTS

24 32. Except as set forth herein, there are no promises,
25 understandings or agreements between the USAO and defendant or
26 defendant's counsel. This agreement supersedes and replaces the
27 Letter Agreements. Nor may any additional agreement,
28 understanding or condition be entered into unless in a writing

1 signed by all parties or on the record in court.

2 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING


3 33. The parties agree and stipulate that this Agreement
4 will be considered part of the record of defendant's guilty plea
5 hearing as if the entire Agreement had been read into the record
6 of the proceeding.

7 This agreement is effective upon signature by defendant and
8 an Assistant United States Attorney.

9 AGREED AND ACCEPTED


10 UNITED STATES ATTORNEY'S OFFICE
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 DEBRA W. YANG
13 United States Attorney

14 
15 JAMES M. AQUILINA
Assistant United States Attorney

4/12/05
Date

16 I have read this agreement and carefully discussed every
17 part of it with my attorney. I understand the terms of this
18 agreement, and I voluntarily agree to those terms. My attorney
19 has advised me of my rights, of possible defenses, of the
20 Sentencing Guideline provisions, and of the consequences of
21 entering into this agreement. No promises or inducements have
22 been made to me other than those contained in this agreement. No
23 one has threatened or forced me in any way to enter into this
24 agreement. Finally, I am satisfied with the representation of my
25 attorney in this matter.

26 
27 PAUL GARRETT ASHLEY
28 Defendant

4/7/05
Date